To: Ms. Renata Hesse **Fax #: 1-202-616-9937**

From: Phillip W. De Vous **Date: January 22, 2002**

Total number of pages (including cover sheet): 3 pages

Dear Ms. Hesse:

In line with the provisions for public comment provided for in the Tunney Act, I would like to offer a few comments from the Acton Institute concerning the Microsoft settlement.

I appreciate your time and consideration in reviewing the attached letter. Should you have any questions, please do not hesitate to contact me at (616) 454-3080 or at pdevous@acton.org.

Yours truly,

Phillip W. De Vous
Public Policy Manager

Acton Institute for the Study of Religion and Liberty
161 Ottawa NW, Suite 301, Grand Rapids, Michigan 49503
Phone: (616) 454-3080 • Fax: (616) 454-9454

January 10, 2002

Ms. Renata Hesse
Trial Attorney
Antitrust Division
Department of Justice
601 D. Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse:

Under the provisions contained in the Tunney Act providing for public comment on the Final Judgment Stipulation and Competitive Impact Statement in the case of United States vs. Microsoft, I am pleased to offer some comments on behalf of the Acton Institute for the Study of Religion and Liberty concerning this important settlement. The work of the Department of Justice in soliciting a wide and varied consultation in this most important legal matter is greatly appreciated.

The primary goal of antitrust law and legislation is to protect consumer interests, in attempting to assure that no one corporation illegally or unethically dominates the market choices that consumers are able to make. In a society of free and open markets the consumer is the primary arbiter of what products and services are chosen and, ultimately, of which businesses remain profitable and viable. In the case of Microsoft, consumers have consistently chosen Microsoft products over those offered by Microsoft's competitors.

As a result of the information communicated by consumer preference, it seems that the Department of Justice has failed to show in the case of United States vs. Microsoft the harm perpetrated on the consumer, thus undermining the very purpose of antitrust laws designed for the protection of consumer interests. Rather, it seems that powerful competing interests have decided to take the battle for market share out of the free and open marketplace and into the courtroom. This battle for market share is most appropriately decided by the free choice of the consumer, not by judicial fiat.

This lawsuit and the pending settlement if an example of a troublesome tendency of the government to meddle in the processes of the free market. Furthermore, it seems that a regime of increased government regulation on the technology industry will be the inevitable result of this legal settlement. Innovation, creativity, and a level of high risk are the hallmarks of the technological revolution that has marked our nation in the last two decades. Entrepreneurs in this industry know from the outset that the level of risk undertaken and endured in the technology sector is a phenomenal one. Given the fast pace of technological innovation and the need to stay abreast of these innovations, the

Acton Institute for the Study of Religion and Liberty
161 Ottawa Avenue NW, Suite 301, Grand Rapids, Michigan 49503
Phone (616) 454-3080 • Fax (616) 454-9454
www.acton.org

last thing that should occur in the technology industry is a regime of increased regulation. The proposed independent Technical Committee (TC), which would oversee and evaluate Microsoft's compliance with the settlement terms, is an excellent example of burdensome government intrusion into an industry that requires maximum freedom to innovate and to be creative. This committee's authority to hire unlimited staff, its on-site location at the Microsoft campus and its costs being entirely at Microsoft's expense is an unprecedented and unnecessary enforcement mechanism. Furthermore, it is my opinion that this committee constitutes a completely illegitimate intrusion of the government into the workings of private industry and, in effect, will serve to give Microsoft's competitors an unfair innovative advantage in the marketplace, as they will not be subject to this suffocating regulatory burden.

The final aspect I would like to comment upon, concerning the settlement of the United States vs. Microsoft, concerns the issue of intellectual property rights. As part of the settlement, Microsoft is forced to disclose the proprietary codes and other technical information that enables any Widows operating system to communicate with Microsoft servers and middleware products. These codes and technical information are the result of the research and development conducted by Microsoft. Microsoft alone has incurred the expense and risk associated with the development of these operating systems and middleware products. To set aside Microsoft's right to protect and profit from the product of its labor sets a dangerous precedent for all industries that rely on intellectual property derived from costly research and development. Unfortunately, one serious unintended effect of the forced licensing of Microsoft intellectual property will serve to destabilize the environment in which research and development occurs. By lessening the protections surrounding proprietary information obtained through costly research and development, further technological innovations simply become too risky to undertake, as it becomes unclear whether such costs can be recovered in the marketplace. Such a move will cause great harm to consumers, effectively blocking their demand for further and more advanced innovation in the technology market.

I appreciate the opportunity to offer some reflections on just a few of the matters contained in this multi-faceted settlement. Should I or the Acton Institute be of any further assistance in this matter, please do not hesitate to contact me. I may be reached at (616) 454-3080 or at pdevous@acton.org.

Yours truly,

Phillip W. De Vous

Phillip W. De Vous
Public Policy Manager